



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FACT SHEET FOR S.B. 1306

county development fees

Purpose

Redefines a county's ability to assess development fees.

Background

Statute currently allows a county to assess development fees if the county has adopted a capital improvement plan and the fees are within the county's planning area. Development fees may offset the capital costs for water, sewer, streets, parks and public safety facilities necessary for public services provided by the county for development within the planning area (A.R.S. § 11-1102).

Community facilities districts are established under A.R.S. Title 48, Chapter 4, Article 6. If a petition is signed by at least 25 percent of the owners of the proposed land area in the district, the governing body may declare its intention to form a community facilities district (A.R.S. § 48-407). Counties are required to take into account all public infrastructure provided by the district and capital costs paid by the development fees based on the infrastructure or costs. A county is prohibited from assessing development fees from a school district or charter school for other than fees for streets, water and sewer utility functions. Counties are required to give at least 120 days advanced notice of intention to assess a new or increased development fee, provide a written report with all documentation supporting the assessment and conduct a public hearing. Once adopted by the Board of Supervisors (BOS) the development fees are not effective for at least 90 days (A.R.S. § 11-1102).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Development Fees

1. Requires a county to calculate development fees based on infrastructure improvements plan (IIP) and create a schedule for paying the development fees based on the costs identified in the IIP. If an IIP is not previously adopted, the county is required to amend the plan and provide a credit toward the payment of development fees in similar areas of the plan.
2. Allows counties to continue to assess development fees adopted before January 1, 2017, to continue to provide a necessary public service and shall be replaced by development fees on

or before January 1, 2018. Requires any development fee monies in accounts collected before January 1, 2017, to be used towards the same category authorized by this legislation.

3. Requires any development fees in a fund not authorized by this legislation to be distributed evenly among the categories of infrastructure improvements authorized by this legislation.
4. Allows the county to continue to assess development fees financed before June 1, 2016, if the fees were pledged to repay debt obligations. After January 1, 2018, the fees collected are used solely for payment of principal and interest on the debt obligation.
5. Requires the county to assess development fees on commercial and industrial development if fees are assessed against residential development in the county. Counties are allowed to distinguish between different categories and waive development fees, but are required to provide notice of waiver to the advisory committee and reimburse fees.
6. Stipulates development fees may not exceed a proportionate share of the costs for necessary public services needed for development based on number of units.
7. Establishes necessary public services shall be based on the same level of service provided to existing development in the service area at the time the infrastructure improvement plan is adopted.
8. Stipulates development fees should not be used to impose on new residents a burden that all taxpayers of a county should bear equally.
9. Prohibits development fees from being used for any of the following:
 - a) funding a higher level of service;
 - b) expansion of public facilities or assets other than necessary public services or facility expansions identified in the IIP;
 - c) repair, operation or maintenance of existing or new necessary public services or facility expansions;
 - d) making improvements to meet stricter safety, efficiency, environmental or regulatory standards;
 - e) making enhancements to provide a higher level of service to existing development; or
 - f) cost of administration, maintenance or operations.
10. Entitles use and benefit of services for the services for which development fees were imposed, including immediate service from any existing facility with available capacity to serve the new units if the available capacity has not been reserved or pledged in connection with the construction or financing of the facility.
11. Allows development fees to be collected if any of the following occur:
 - a) the collection is made to pay for a necessary public service or facility expansion that is identified in the IIP with plans to complete construction and have the service available within the time period established in the IIP, but not longer than 10 years;
 - b) the county reserves capacity in the IIP or reserves capacity for future development; or

- c) the county requires or agrees to allow the owner of a development to construct or finance the necessary public service or facility expansion. Costs incurred may be credited against or reimbursed from the development fees otherwise due from a development for other services in the same service area or allow the owner to assign the reimbursement rights to other development for the same category of necessary public services in the same service area.
12. Allows projected interest charges and other finance costs included in the amount of development fees if the monies are used for the payment of principal and interest on financial obligations for the construction of public services identified in the IIP.
 13. Requires the county to provide for reimbursement upon request from the developer for the actual costs for improvements or expansions included in the IIP for which development fees are assessed if the developer provides the necessary improvements or expansions.
 14. Allows the developer to pay for construction permits for units after they are issued if specified in the development agreement, not to exceed 15 days after issuance of a certificate of occupancy. Development agreements allowing for deferred development fees require appropriate security, including a surety bond, letter of credit or cash bond.
 15. Stipulates if a county requires open space be set aside for development approval, the county shall issue a credit toward any development fees identified in the IIP for park facilities or facility expansion. Upon request of the individual or entity seeking developmental approval, the county is required to provide a reimbursement of the actual costs of construction or improvement of the public facility.
 16. Requires the county to forecast all sources of revenue derived from the property owner towards the capital costs covered by development fees for necessary public services.
 17. Reduces advance notice requirements for assessing development fees from 120 days to 30 days. Requires the county to post the adopted IIP to the county's website and hold a public hearing. The county will approve or disapprove the development fees within 60 days of the hearing.
 18. Prohibits a county from adopting an ordinance, order or resolution approving development fees in an emergency measure.
 19. Stipulates if the actual cost for construction is less than the forecast by more than 10 percent, the current owner may receive a refund, including interest earned by the county.
 20. Stipulates a property owner is entitled to a refund for development fees paid upon written request if:
 - a) services are not provided;
 - b) the county failed to complete construction within the time period identified in the IIP; and
 - c) development fees are not spent within 10 years.

21. Prohibits a county from placing a moratorium on development for the sole purpose of awaiting completion of the process necessary to adopt or update development fees.

Infrastructure Improvements Plan

22. Requires the BOS to adopt or update the land use assumptions and IIP for the designated service area before adoption or amendment of development fees. A public hearing must be conducted at least 30 days before land use assumptions and IIP. At least 60 days before a public hearing the county shall release the plan to the public and post the plan on the county website, subject to the following:
- a) requires approval or disapproval within 60 days of a public hearing on the land use assumptions and the IIP must be approved or disapproved at least 30 days before the public hearing on accessing development fees;
 - b) requires the IIP to be developed by qualified professionals using generally accepted engineering and planning practices;
 - c) at least every five years the county shall update the land use assumptions and IIP, the initial five-year period begins on the day the plan is adopted;
 - d) the county is required to schedule and provide notice of a public hearing to discuss and review the land use assumptions and IIP within 60 days of completion;
 - e) a county is required to hold a public hearing to discuss the development fees per service unit, land use assumptions and IIP or proposed amendments;
 - f) a county shall approve or disapprove the amendments to the land use assumptions, IIP or development fees within 60 days of the public hearing;
 - g) the advisory committee must file written comments on any proposed or updated land use assumptions, IIP and development fees before the fifth business day before the date of the public hearing;
 - h) if the county determines there are no changes to the land use assumptions, IIP or development fees are not required, the county shall post a public notice of determination on the county's website with the following:
 - i. statement that the county determined no change is necessary;
 - ii. description and map of the service area;
 - iii. statement that after 60 days from the first notice a person may request in writing that the county update the land use assumptions, IIP or development fees; and
 - iv. a contact person or entity to whom the written request for an update should be sent.
 - i) stipulates that if a person requests in writing an update to the land use assumptions, IIP or development fees the county must accept or reject an update; and
 - j) allows a county to amend an IIP without a public hearing if the amendment addresses only elements of necessary public services in the existing IIP and the changes to the plan will not increase the level of service or cause an increase in development fees greater than five percent.
23. Requires that, for each necessary public service that is the subject of development fees, the IIP shall include:
- a) a description of the existing necessary public service in the service area and the costs for meeting existing needs and enhanced standards prepared by licensed qualified professionals;

- b) analysis of the total capacity, level of current usage and commitments for usage;
 - c) description of the necessary public services or facility expansions and their costs based on the approved land use assumptions;
 - d) cost of ongoing maintenance and operations once construction is completed and the revenue source for funding maintenance and operations;
 - e) total number of projected service units attributed to new development in the service area; and
 - f) forecast of revenues generated by new service units other than development fees, including estimated state shared revenue, highway user revenue, federal revenue, property taxes, construction contracting or similar excise taxes and capital recovery portion of utility fees attributable to development.
24. Prohibits a county from an ordinance requiring new development fees or an increased portion of modified development fees be assessed against a development after the date that the county issues the final approval for a commercial industrial or multifamily development or the date that the first building permit is issued for a residential development.

Infrastructure Improvements Advisory Committee

25. Requires a county to do one of the following:
- a) appoint an Infrastructure Improvements Advisory Committee (Committee) composed of at least five members who are appointed by the BOS, and at least 50 percent of the members of the Committee must be representatives of real estate, development or building industries, with at least one member from the home building industry; or
 - b) provide a biennial certified audit of the county's land use assumptions, IIP and development fees.
26. Requires the Committee to:
- a) advise the county in adopting land use assumptions;
 - b) review IIP and file written comments;
 - c) monitor and evaluate implementation of the IIP;
 - d) file reports with the progress, collection and expenditures of development fees; and
 - e) advise county of the need to update or review the land use assumptions, IIP and development fees.
27. Defines terms.
28. Makes technical and conforming changes.
29. Becomes effective on the general effective date.